

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Jennifer Marie Jones,

Plaintiff,

vs.

Town of Quartzsite; Jeffrey Gilbert and  
Sondra Gilbert, Husband and Wife;  
Officer Rick Paterson, #43; Officer  
Xavier Frausto, #15; and Terry Frausto,  
Husband and Wife; and Denise Ann  
Florian,

Defendants.

No. CV-12-2629-PHX-LOA

**NOTICE OF ASSIGNMENT  
AND ORDER**

Pursuant to Local Rule ("LRCiv") 3.8(a), Rules of Practice, effective December 1, 2012, civil cases are, and will be, randomly assigned to a United States district judge or to a United States magistrate judge. This matter has been assigned to the undersigned United States Magistrate Judge.

**I. Magistrate Judge Jurisdiction**

As a result of the aforesaid Local Rule and assignment, if all parties consent in writing, the case will remain with the assigned Magistrate Judge pursuant to 28 U.S.C. 636(c)(1) for all purposes, including trial and final entry of judgment. If any party chooses the district judge option, the case will be randomly reassigned to a U.S. district judge. To either consent to the assigned Magistrate Judge or to elect to have the case heard before a district judge, the appropriate section of the form, entitled Consent To Exercise Of Jurisdiction By United States Magistrate Judge, must be completed, signed and filed. The party filing the case or removing it to this District Court is responsible for

1 serving all parties with the consent forms. Each party must file a completed consent form  
 2 and certificate of service with the Clerk of the Court no later than 14 days after entry of  
 3 appearance or as otherwise directed by the Court, and shall serve a copy upon all other  
 4 parties of record in the case.<sup>1</sup>

5 Any party is free to withhold consent to a magistrate judge without adverse  
 6 substantive consequences. 28 U.S.C. 636(c)(2); Rule 73(b), Fed.R.Civ.P.; *Anderson v.*  
 7 *Woodcreek Venture Ltd.*, 351 F.3d 911, 914 (9<sup>th</sup> Cir. 2003) (pointing out that consent is  
 8 the “touchstone of magistrate judge jurisdiction” under Title 28 U.S.C. §636(c)). “A party  
 9 to a federal civil case has, subject to some exceptions, a constitutional right to proceed  
 10 before an Article III judge.” *Dixon v. Ylst*, 990 F.2d 478, 479 (9th Cir. 1993) (citing  
 11 *Pacemaker Diagnostic Clinic of Am., Inc. v. Instromedix, Inc.*, 725 F.2d 537, 541 (9th  
 12 Cir. 1984) (*en banc*)).

13 A review of the District Court’s docket reflects that the Defendant Florian filed her  
 14 Answer on May 1, 2013. (Doc. 8) Defendant Florian has until, and including,  
 15 **Wednesday, May 15, 2013** within which to make her selection to either voluntarily  
 16 consent to a magistrate judge presiding over this case or elect to have the case assigned to  
 17 a United States district judge.

## 18 **II. Federal Rules of Civil Procedure 12(b)(6) and Rule 12(b)**

19 Motions pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(c) are  
 20 discouraged in the District Court of Arizona if the defect can be cured by filing an  
 21 amended pleading. Therefore, the parties’ counsel and Plaintiff must meet and confer  
 22 prior to the filing of such motions to determine whether it can be avoided. Consequently,  
 23 motions to dismiss pursuant to Rule 12(b)(6), Fed.R.Civ.P., for failure to state a claim

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 25 <sup>1</sup> The consent/election form was mailed to Plaintiff the Clerk on December 11, 2013.  
 26 (Doc 2) One may also find the consent/election form on the District’s web site, click on  
 27 “Local Rules” at the top of the page, then click on “Forms” on the left side of the page and  
 28 then click on and print the appropriate form. Consent/election forms are not to be e-filed.  
 Consent/election forms are to be filed in paper form with the Clerk’s Office. ECF Policies  
 and Procedure Manual, II, ¶ P at p.25.

1 upon which relief may be granted, or Rule 12(c), Fed.R.Civ.P., for judgment on the  
2 pleadings must contain a verified certification of conferral, indicating that counsel and  
3 Plaintiff have conferred to determine whether an amendment could cure a deficient  
4 pleading, and have been unable to agree that the pleading is curable by a permissible  
5 amendment. In addition, counsel shall endeavor not to oppose motions to amend that are  
6 filed prior to the Rule 16 scheduling conference or within the time set forth in the Rule 16  
7 case management order. Motions to dismiss that do not contain the required certification  
8 are subject to be stricken on the Court's own motion or the imposition of other sanctions.

9 Accordingly,

10 **IT IS ORDERED** that Defendant Florian shall file her written election to either  
11 consent to magistrate judge jurisdiction or elect to proceed before a United States district  
12 judge on or before **Wednesday, May 15, 2013**.

13 **IT IS FURTHER ORDERED** that motions to dismiss pursuant to Rule 12(b)(6),  
14 Fed.R.Civ.P., or Rule 12(c), Fed.R.Civ.P., must contain a verified certification of  
15 conferral, indicating that counsel and Plaintiff have conferred to determine whether an  
16 amendment could cure a deficient pleading, have been unable to agree that the pleading is  
17 curable by a permissible amendment, and have otherwise complied with this Order.

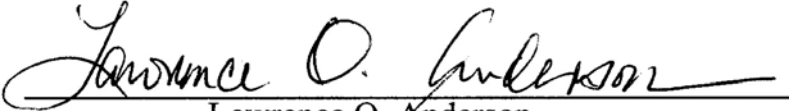
18 **IT IS FURTHER ORDERED** that Defendants Individual Does I-X are hereby  
19 **DISMISSED** without prejudice. These individual defendants are dismissed because the  
20 Federal Rules of Civil Procedure do not provide for the use of fictitious parties. *Wenzel v.*  
21 *Arpaio*, 2009 WL 4154926, at \*3 (D. Ariz. Nov. 20, 2009) ("Generally, the use of  
22 anonymous type appellations to identify defendants is not favored. Rule 10(a) of the  
23 Federal Rules of Civil Procedure requires the plaintiff to include the names of the parties  
24 in the action."); *Fifty Assocs. v. Prudential Ins. Co. of Am.*, 446 F.2d 1187, 1191 (9th Cir.  
25 1970); *Tolefree v. Ritz*, 382 F.2d 566, 567 (9th Cir. 1967).

26 **IT IS FURTHER ORDERED** that counsel and any unrepresented party must  
27 hereinafter comply with the Rules of Practice for the United States District Court for the  
28 District of Arizona. The District's Rules of Practice may be found on the District Court's

1 internet web page at [www.azd.uscourts.gov/](http://www.azd.uscourts.gov/).

2 **IT IS FURTHER ORDERED** that counsel and Plaintiff must use the above  
3 caption, number and initials on all pleadings or other filings until further order of the  
4 Court.

5 Dated this 6<sup>th</sup> day of May, 2013.

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8 Lawrence O. Anderson  
9 United States Magistrate Judge  
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